UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CANDELARIO BORGE,

Petitioner,

v.

DAVID HARDIN,
In his Official capacity as Warden of
Glades County Detention Center; and

TODD M. LYONS,
In his Official capacity as Acting Director,
U.S Immigration and Customs Enforcement;

Respondents.

_____/

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. This is a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner, Candelario Borge, is a 43-year-old national from Nicaragua who has lived in the United States for nearly 20 years, since 2006, and is currently detained by Respondents at the Glades County Detention Center, in Moore Haven, FL under A[redacted] He has filed an application for asylum and withholding of removal with United States Citizenship and Immigration Services (USCIS) and was given a work permit. He has no criminal reccord other than traffic violations.

2. Respondents are holding Petitioner under mandatory detention without eligibility for a bond hearing under the recently-decided Board of Immigration Appeals (BIA) decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). He is asking this Court to order Respondents to grant him a bond hearing before an immigration judge, where he can demonstrate that he is not a flight risk nor a danger to the community, as required by the statutes and regulations governing immigration.
3. *Matter of Yajure Hurtado*, decided September 5, 2025, overturned 30 years of established immigration court practice. Petitioner believes the decision is based on current administration policy to detain and deport all illegal aliens, not the law.
4. This BIA decision is erroneous, violates the Immigration and Nationality Act (INA) §235(b) and §236, the Due Process Clause of the Fifth Amendment to the United States Constitution, and US and international law, of which the US is signatory, relating to the treatment of asylees.
5. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, federal courts should independently interpret the meaning and scope of §§ 235(b) and 236 using the traditional tools of statutory construction. Because the BIA's decision in *Matter of Yajure Hurtado* is a deviation from the agency's long-standing interpretation of § 235 and 236; is not guidance issued contemporaneously with enactment of the relevant statutes, and contradicts the statutory interpretations of dozens of federal courts, a habeas crourt should give it no weight under *Loper*.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241, which grants federal courts the authority to hear habeas corpus petitions from individuals held in custody in violation of the Constitution or laws of the United States. Jurisdiction is also proper under 28 U.S.C. § 1331.
7. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 2241(d) because Petitioner is detained at the Glades County Detention Center, which is located within this judicial district.

PARTIES

8. Petitioner **Candelario Borge** (A[redacted] is a citizen of Nicaragua and is currently detained by the Respondents at the Glades County Detention Center, in Moore Haven, FL.
9. Respondent **David Hardin** is the Warden of Glades County Detention Center who has direct supervisory authority over Petitioner's detention. He is sued in his official capacity.
10. Respondent **Todd M. Lyons** is the Acting Director of the U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity.

FACTUAL ALLEGATIONS

11. Petitioner, Candelario Borge, is a native and citizen of Nicaragua who has resided continuously in the United States for approximately twenty years. He entered the United States without inspection (EWI) across the southen border on February 18, 2006. Since his entry two decades ago, Petitioner was never apprehended or processed by immigration authorities until his current detention.

12. Petitioner has maintained stable, continuous employment in the construction industry since 2006. He has no criminal record other than traffic violations. On June 27, 2024, he filed an Application for Asylum and Withholding of Removal with USCIS, which remains pending, and he was issued a work permit.
13. On November 20, 2025, Petitioner was taken into custody by law enforcement in Pompano Beach, Florida, while driving his employer's vehicle. Respondents continue to hold Petitioner in mandatory detention at the Glades County Detention Center, refusing to grant him an individualized bond hearing before an Immigration Judge.
14. Respondents rely solely upon the Board of Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) to justify this mandatory detention. By applying this decision, Respondents treat a twenty-year resident as if he were an alien arriving at the border, thereby denying him any opportunity to demonstrate that he is neither a flight risk nor a danger to the community.

LEGAL CLAIMS

COUNT I: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

15. Petitioner re-alleges and incorporates by reference the preceding paragraphs.
16. The Immigration and Nationality Act (INA) establishes two distinct statutory categories for the treatment and detention of noncitizens:
    - Section 235 (8 U.S.C. § 1225): This section governs the admission of aliens who arrive in the U.S. or are at the border seeking relief. It generally requires mandatory detention.

- Section 236 (8 U.S.C. § 1226): This section applies to aliens who are apprehended within the U.S. (in the interior). It allows for bond hearings for non-criminal aliens who may seek release by demonstrating they are not a danger to the community or a flight risk.

17. The Board of Immigration Appeals (BIA), in its September 5, 2025 decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), held for the first time that all aliens who entered the U.S. without authorization are subject to Section 235 mandatory detention, as applicants for admission, regardless of their length of stay or ties to the U.S.

18. Federal courts have consistently held that INA § 236, not § 235(b)(2), authorizes the detention of noncitizens who previously entered without inspection and were apprehended in the interior of the country.

19. There are several reasons why the BIA's expansive interpretation of INA § 235(b)(2) misreads the statute:

    - As the Supreme Court recognized in *Jennings v. Rodriguez*, § 235(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry".
    - Throughout its text, § 235 refers to "inspections," a term that typically connotes an examination upon or soon after physical entry. This is further supported by citations such as INA § 235 (titled "Inspection by Immigration Officers"); INA §§ 235(b)(1) (referring to "inspections" in the title); and INA § 235(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United

States"). The statute's text, referring to "inspections" and being concerned "primarily [with those] seeking entry," confirms that § 235(b) has a limited temporal and geographic scope and should be imposed "at the Nation's borders and ports of entry."

- Consistent with this focus on the moment of physical entry, § 235(b)(2) is limited to those in the process of "seeking admission." Petitioner in this case has been in the country for 20 years and is clearly not seeking admission. Similarly, the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are presently "coming or attempting to come into the United States." The statutory and regulatory text's use of the present and present progressive tenses excludes noncitizens apprehended in the interior like Petitioner, because they are no longer in the process of arriving in or seeking admission to the United States.

21. The INA's statutory structure confirms that § 236 also reaches individuals who have not been admitted and have entered without inspection. For example, Section 236(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 236(a), including noncitizens subject to certain grounds of inadmissibility. Congress recently added new mandatory detention grounds to § 236(c) that apply only to noncitizens who have not been admitted, expressly including those who are inadmissible under § 212(a)(6)(A) or (7)—that is, persons who entered without being admitted. If § 236(a) did not apply to inadmissible noncitizens, the carve-out and recent amendments in § 236(c) would be rendered surplusage.

22. The statutory history also supports a limited reading of § 235(b)'s reach. When Congress amended § 235(b)'s predecessor statute to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby "sweep millions of noncitizens into § 235(b)".
23. Petitioner is not "seeking entry." He entered the US February 18, 2006 and was apprehended in the interior of the US on November 20, 2025 - nearly 20 years after entry. He was undoubtedly not "in the process of entering or just entered the US." This factual context places his detention squarely under Section 236. To classify a two-decade resident as an alien seeking entry is a legal fiction that renders the interior enforcement provisions of § 236(a) superfluous.
24. Under ***Loper Bright v. Raimondo***, this Court owes no deference to the BIA's recent and unpersuasive statutory pivot. Following the "traditional tools of statutory construction," it is clear that Petitioner's detention is governed by § 236(a), which requires a bond hearing.

COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT, AND INTERNATIONAL LAW

24. Petitioner re-alleges and incorporates by reference the preceding paragraphs.
25. The Fifth Amendment's Due Process Clause provides that no person shall be "deprived of... liberty... without due process of law." This protection applies to all **persons** within the United States, regardless of immigration status.

26. Freedom from imprisonment lies at the heart of the liberty protected by habeas corpus (*Zadvydas v. Davis*, 533 U.S. 578, 690 (2001)). In civil proceedings, including deportation cases, detention is only justified in certain "special and narrow non-punitive circumstances," where a compelling justification outweighs the individual's constitutionally protected interest in avoiding physical restraint.

27. The Supreme Court has repeatedly held that non-punitive detention violates the Constitution unless it is strictly limited and accompanied by a prompt individualized hearing before a neutral decisionmaker (*See, e.g., United States v. Salerno*, 481 U.S. 739, 750-51 (1987)).

29. Petitioner's continued mandatory detention without a bond hearing is unconstitutional, especially given the lack of any criminal conviction. His mandatory detention under the BIA's *Matter of Yajure Hurtado* decision serves no legitimate governmental purpose and therefore violates the Fifth Amendment.

30. Furthermore, Petitioner has a pending asylum application. As a signatory to the 1967 Protocol relating to the Status of Refugees, the United States is prohibited from imposing unnecessary and arbitrary restrictions on the movement of asylum seekers. Mandatory detention for an asylum seeker with no criminal record and twenty years of U.S. ties serves no legitimate governmental purpose. It is punitive in nature and intended to coerce the abandonment of a valid asylum claim, in violation of both US asylum law and international treaty obligations.

31. The US is signatory to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. These treaties, reflecting fundamental norms of liberty, prohibit the arbitrary

detention of individuals within the country who are pursuing relief from deportation, reinforcing the need for an individualized assessment of flight risk and danger.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Candelario Borge respectfully requests that this Honorable Court: **A.** Assume Jurisdiction over this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. **B.** Order Respondents to justify the legality of Petitioner's continued mandatory detention within three days. **C.** Issue a Writ ordering Respondents to hold a bond hearing for the Petitioner before an Immigration Judge, where he can demonstrate that he is neither a danger to the community nor a flight risk, in accordance with the procedures in effect prior to the September 5, 2025 *Matter of Yajure Hurtado* decision. **D.** In the alternative, order Petitioner's immediate release from custody under a $5,000 bond, based on his twenty years of U.S. residence, lack of a criminal record, and his active pursuit of relief through a pending asylum application. **E.** Grant such other and further relief as this Court may deem just and proper.

Dated: January 30, 2026

Respectfully submitted,

/s/Robert Sheldon
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